

REMARKS

Applicants have previously cancelled claims 1-12, 21-28, and 30-33 without prejudice. For purposes of expediting prosecution, Applicants have amended claim 43 to correct a grammatical error. Applicants preserve the right to prosecute all cancelled claims and deleted subject matter in continuing patent applications.

Applicants thank the Examiner for the time that was generously extended during the telephone interview that was conducted on February 19, 2009, in regard to the November 25, 2008 Final Office Action. During the course of this Interview, Applicants discussed with the Examiner the 35 U.S.C. § 112, first paragraph rejection, and pointed out to the Examiner where support could be found within the specification for the proviso in claim 13, which is discussed in more detail hereinbelow.

Rejection under 35 U.S.C. § 112

The Office rejected claims 13-26, 29, 35 and 36 under 35 U.S.C. § 112, first paragraph, alleging that there is no support in the application for the proviso in claim 13 “when X is -O- or -N(R⁵)-, then Y cannot contain phenyl, naphthyl, cyclohexyl, dihydronaphthyl tetrahydronaphthyl, or a five- to six-membered heteroaryl, each optionally substituted.” Applicants respectfully point out to the Examiner, as was discussed during the February 19, 2009 interview, that this proviso in claim 13 is supported in the specification as filed and support can be found in original claim 1, and on Page 7 of the specification as filed (WO 2005/039506). Applicants also wish to point out, as was discussed during the February 19, 2009 interview, that the proviso in claim 13 is a simplified version of the original proviso and that this proviso in claim 13 has the same meaning as the original proviso in claim 1. Accordingly, no new matter has been added.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the present application is in condition for allowance, which action is earnestly solicited.

In regard to the Office’s allegation of Lack of Unity of claims 37-43, Applicants wish to point out to the Examiner that Restriction practice in accordance with 37 CFR 1.141- 1.146 continues to apply to U.S. national applications filed under 35 U.S.C.

111(a), even if the application filed under 35 U.S.C. 111(a) claims benefit to an earlier U.S. national stage application submitted under 35 U.S.C. 371. When all of the claims drawn to the elected invention are allowable, the non-elected invention(s) should be considered for rejoinder.

No fees are believed to be due in order to process this document and any paper attached. Should the U.S. Patent Office determine that an extension of time and/or other relief is required at this time, the Commissioner is authorized to charge the cost of such relief and/or fees to Deposit Account No. 50-1108, referencing EX04-066C-US.

Respectfully submitted,

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Robert L. Bernstein
Attorney for Applicants
Registration No. 46,020

Exelixis, Inc.
210 East Grand Avenue
Post Office Box 511
South San Francisco, CA 94083-0511
Direct Phone: (650) 837-7352
Fax: (650) 837-8234